

HOUSE BILL No. 1353

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-1; IC 28-5-1; IC 28-6.1-9-1; IC 28-8-1-2; IC 28-13-4-7.

Synopsis: Financial institutions. Provides that certain investments by specified financial institutions may not exceed a specified percentage of the financial institution's capital and surplus. (Current law provides that certain investments by financial institutions may not exceed a specified percentage of the financial institution's sound capital.) Changes the term "sound capital" to "capital and surplus".

Effective: July 1, 2007.

Bardon

January 16, 2007, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1353

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-1-1-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 3. Unless a different meaning is
3 required by the context, the following definitions apply throughout this
4 article:

5 (1) "Financial institution" means any bank, trust company,
6 corporate fiduciary, savings association, credit union, savings
7 bank, bank of discount and deposit, or industrial loan and
8 investment company organized or reorganized under the laws of
9 this state, and includes a consumer finance institution licensed to
10 make supervised or regulated loans under IC 24-4.5.

11 (2) "Bank" or "bank or trust company" means a financial
12 institution organized or reorganized as a bank, bank of discount
13 and deposit, or trust company under the laws of this state with the
14 express power to receive and accept deposits of money subject to
15 withdrawal by check, and possessing such other rights and powers
16 granted by the provisions of this article in express terms or by
17 implication. The term "bank" or "bank or trust company" does not



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1 include a savings association, credit union, or industrial loan and
2 investment company.

3 (3) "Domestic corporation" means a corporation formed under the
4 laws of this state, and "foreign corporation" means every other
5 corporation.

6 (4) "Articles of incorporation" includes both the original articles
7 of incorporation and any and all amendments thereto, except
8 where the original articles of incorporation only are expressly
9 referred to, and includes articles of merger and consolidation, and,
10 in the case of corporations organized before July 1, 1933, articles
11 of reorganization, and all amendments thereto.

12 (5) "Incorporator" means one (1) of the signers of the original
13 articles of incorporation.

14 (6) "Subscriber" means one who subscribes for shares of stock in
15 a financial institution.

16 (7) "Shareholder" means one who is a holder of record of shares
17 of stock in a financial institution.

18 (8) "Capital stock" means the aggregate amount of the par value
19 of all shares of capital stock.

20 (9) "Capital" means the aggregate amount paid in on the shares of
21 capital stock of a financial institution issued and outstanding.

22 ~~(10) "Sound capital" means and includes the paid-in and~~
23 ~~unimpaired capital; the unimpaired surplus; and the unimpaired~~
24 ~~proceeds of the notes and debentures of any bank which have~~
25 ~~been issued under the authority and with the approval; in writing;~~
26 ~~of the department.~~

27 **(10) "Capital and surplus" or "unimpaired capital and**
28 **unimpaired surplus" has the meaning set forth in 12 CFR**
29 **3.100.**

30 (11) "Assets" includes all of the property and rights of every kind
31 of a financial institution and the term "fixed assets" means such
32 assets as are not intended to be sold or disposed of in the ordinary
33 course of business.

34 (12) "Principal office" means that office maintained by the
35 financial institution in this state, the address of which is required
36 by the provisions of this article to be kept on file in the office of
37 the secretary of state.

38 (13) "Subscription" means any written agreement or undertaking,
39 accepted by a financial institution, for the purchase of shares of
40 capital stock in the financial institution.

41 (14) "Department" means the department of financial institutions.

42 (15) "Member" means a member of the department of financial

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institutions.

(16) "Branch" means any office, agency, or other place of business, other than the principal office of a financial institution, at which deposits are received, checks paid, or money lent.

(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.

(18) "Savings bank" means a financial institution that:

(A) was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993;

(B) is formed as the result of a conversion under:

(i) IC 28-1-21.7;

(ii) IC 28-1-21.8;

(iii) IC 28-1-21.9; or

(iv) IC 28-1-30; or

(C) is incorporated under IC 28-12.

(19) "Corporate fiduciary" means a financial institution whose primary business purpose is to engage in the trust business (as defined in IC 28-14-1-8) and the execution and administration of fiduciary accounts as a nondepository trust company incorporated under Indiana law.

SECTION 2. IC 28-1-11-3.1, AS AMENDED BY P.L.57-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the

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1 powers incidental and proper or which may be necessary and usual in
 2 carrying on a general banking business, but it shall have no right to
 3 issue bills to circulate as money.

4 (b) Subject to such regulations as the department finds to be
 5 necessary and proper, any bank or trust company shall have the
 6 following powers:

7 (1) To make such loans and advances of credit and purchases of
 8 obligations representing loans and advances of credit as are
 9 eligible for insurance by the federal housing administrator, and to
 10 obtain such insurance.

11 (2) To make such loans secured by mortgages on real property or
 12 leasehold, as the federal housing administrator insures or makes
 13 a commitment to insure, and to obtain such insurance.

14 (3) To purchase, invest in, and dispose of notes or bonds secured
 15 by mortgage or trust deed insured by the federal housing
 16 administrator or debentures issued by the federal housing
 17 administrator, or bonds or other securities issued by national
 18 mortgage associations.

19 (4) To extend credit to any state agency, with the approval of the
 20 department, notwithstanding any other provisions or limitations
 21 of IC 28-1. No law of this state prescribing the nature, amount, or
 22 form of security or requiring security upon which loans or
 23 advances of credit may be made, or prescribing or limiting
 24 interest rates upon loans or advances of credit, or prescribing or
 25 limiting the period for which loans or advances of credit may be
 26 made, shall be deemed to apply to loans, advances of credit, or
 27 purchases made pursuant to subdivisions (1), (2), and (3) and this
 28 subdivision.

29 (5) To purchase, take, hold, and dispose of notes, and mortgages
 30 securing such notes, made to any joint stock land bank heretofore
 31 incorporated, in any case in which not less than ninety-nine
 32 percent (99%) of the stock of said joint stock land bank is owned
 33 by the bank or trust company at the time such notes or mortgages
 34 be acquired by the bank or trust company; and upon dissolution
 35 of any such joint stock land bank, or at any stage in the process of
 36 such dissolution, any bank or trust company then owning not less
 37 than ninety-nine percent (99%) of the stock of such joint stock
 38 land bank may take, hold, and dispose of any notes, mortgages, or
 39 other assets of such joint stock land bank of whatsoever nature,
 40 including real estate, wheresoever situated, which such joint stock
 41 land bank shall assign, transfer, convey, or otherwise make over
 42 to such bank or trust company by way of final or partial

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1 distribution of its assets to its stockholders upon such dissolution
2 or in connection with the process of such dissolution. No law of
3 this state prescribing the nature, amount, location, or form of
4 security, or requiring security upon which loans or advances of
5 credit may be made, or prescribing or limiting interest rates upon
6 loans or advances of credit, or prescribing or limiting the period
7 for which loan or advances of credit may be made, or prescribing
8 any ratio between the amount of any loan and the appraised value
9 of the security for such loan, or requiring periodical reductions of
10 the principal of any loan, shall be deemed to apply to loans, notes,
11 mortgages, real estate, or other assets mentioned in this
12 subdivision.

13 (6) To adopt stock purchase programs for employees and to grant
14 options to purchase, and to issue and sell, shares of its capital
15 stock to its employees, or to a trustee on their behalf (which may
16 be the bank or trust company issuing such capital stock), without
17 first offering the same to its shareholders, for such consideration,
18 not less than par value, and upon such terms and conditions as
19 shall be approved by its board of directors and by the holders of
20 a majority of its shares entitled to vote with respect thereto, and
21 by the department. In the absence of actual fraud in the
22 transaction, the judgment of the directors as to the consideration
23 for the issuances of such options and the sufficiency thereof shall
24 be conclusive. Any bank or trust company exercising the powers
25 granted in this subsection may, to the extent approved by the
26 department, have authorized and unissued stock required to fulfill
27 any stock option or other arrangement authorized herein.

28 (7) Subject to such restrictions as the department may impose, to
29 become the owner or lessor of personal or real property acquired
30 upon the request and for the use of a customer and to incur such
31 additional obligations as may be incident to becoming an owner
32 or lessor of such property.

33 (8) To purchase or construct buildings and hold legal title thereto
34 to be leased to municipal corporations or other public authorities,
35 for public purposes, having resources sufficient to make payment
36 of all rentals as they become due. Each lease agreement shall
37 provide that upon expiration, the lessee will become the owner of
38 the building.

39 (8.1) Subject to the prior written approval of the department, and
40 notwithstanding section 5 of this chapter, to purchase, hold, and
41 convey real estate which is:

42 (A) improved or to be improved by a single, freestanding

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building; and

(B) to be used, in part, as a branch or the principal office of that bank or trust company and, in part, as rental property for one (1) or more lessees.

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the ~~sound~~ capital and surplus of the bank or trust company as provided in section 5 of this chapter.

(9) To invest in community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations or limited liability companies organized for such purposes. Investments by a bank or trust company under this subdivision may not exceed:

(A) in any one (1) project, two percent (2%); and

(B) in the aggregate, five percent (5%);

of the capital and surplus of the bank or trust company, unless the director makes the determination set forth in subsection (c). As used in this subdivision and in subsection (c), "capital and surplus" has the meaning set forth in ~~IC 28-1-13-1.1.~~ **IC 28-1-1-3(10).**

(10) Subject to section 3.2 of this chapter, to exercise the rights and privileges (as defined in section 3.2(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(c) Investments by a bank or trust company under subsection (b)(9) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:

(1) the aggregate investments by the bank or trust company under subsection (b)(9) in excess of five percent (5%) of the capital and surplus of the bank or trust company will not pose a significant risk to the affected deposit insurance fund; and

(2) the bank or trust company is adequately capitalized.

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1 However, in no case shall the aggregate investments by a bank or trust
2 company under subsection (b)(9) exceed ten percent (10%) of the
3 capital and surplus of the bank or trust company.

4 (d) A bank or trust company shall not make any investment under
5 subsection (b)(9) if the investment would expose the bank or trust
6 company to unlimited liability.

7 (e) Any rule made and promulgated under and pursuant to this
8 section may apply to one (1) or more banks or trust companies or to one
9 (1) or more localities in the state as the department, in its discretion,
10 may determine.

11 SECTION 3. IC 28-1-11-5 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Any bank or trust
13 company shall have power to purchase, hold, and convey real estate for
14 the following purposes, and for no others:

15 (1) Such as shall be necessary for the convenient transaction of its
16 business.

17 (2) Such as shall be mortgaged to it or to its assignor immediate
18 or remote, in good faith by way of security for debts.

19 (3) Such as shall be conveyed to it in satisfaction of debts
20 contracted in the course of its dealings, or in satisfaction of debts,
21 notes, or mortgages purchased by or assigned to it, or in exchange
22 for real estate so conveyed to it.

23 (4) Such as it shall purchase at sales under judgments, decrees, or
24 mortgages held by the bank or trust company or shall purchase to
25 secure debts due it.

26 (b) Except with the approval in writing of the department, after July
27 1, 1933, the sum invested in real estate and buildings used for the
28 convenient transaction of its business shall not exceed fifty percent
29 (50%) of the ~~sound~~ capital **and surplus** of such bank or trust company.
30 Such investment may be made in the stock of a corporation organized
31 to own and hold the real estate and building occupied and used wholly
32 or in part by such bank or trust company.

33 (c) No bank or trust company shall hold the title or possession of
34 any real estate purchased or otherwise acquired to secure any debts due
35 to it for a longer period than ten (10) years after such real estate is or
36 has been purchased or otherwise acquired, or after July 1, 1933,
37 without the consent in writing of the department.

38 (d) For the purposes of subsection (a)(1), real estate purchased or
39 held for the convenient transaction of the business of a bank or trust
40 company includes the following:

41 (1) Real estate on which the principal office or a branch office of
42 the bank or trust company is located.

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(2) Real estate that is the location of facilities supporting the operations of the bank or trust company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a bank or trust company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the bank or trust company expects, in good faith, to use as a bank or trust company office or facility in the future.

(e) If real estate referred to in subsection (d)(3) is held by a bank or trust company for one (1) year without being used as a bank or trust company office or facility, the board of directors of the bank or trust company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(f) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than three (3) years without being used as a bank or trust company office or facility unless:

(1) the board of directors of the bank or trust company, by resolution:

(A) reaffirms annually that the bank or trust company expects to use the real estate as a bank or trust company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a bank or trust company office or facility; and

(2) the director determines that:

(A) the continued holding of the real estate by the bank or trust company does not endanger the safety and soundness of the bank or trust company; and

(B) the bank or trust company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (d)(1) and (d)(2).

(g) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than ten (10) years without being used as a bank or trust company office or facility unless the department consents in writing to the continued holding of the real estate by the bank or trust company.

SECTION 4. IC 28-1-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. Every bank or trust company shall have power:

(1) to purchase and hold for the purpose of becoming a member of the federal reserve system:

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(A) so much of the capital stock of a federal reserve bank as shall qualify it for membership, pursuant to the Federal Reserve Act (12 U.S.C. 221 et seq.); and

(B) so much of the capital stock of the Federal Deposit Insurance Corporation as will qualify it for membership, pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 through 1833e);

(2) to do anything necessary or appropriate to acquire and maintain insurance of its deposits in accordance with the provisions of any federal law in force on or after July 1, 1933;

(3) to become a member of the federal reserve system; and

(4) to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the Federal Reserve Act. With the express approval of the department, and except as otherwise provided in this chapter, any bank or trust company shall have the power to purchase and hold shares of the capital stock, bonds, notes, debentures, or any other securities or obligations issued at any time by any agency or instrumentality of the federal government. After July 1, 1933, no bank or trust company shall purchase the capital stock of any joint stock land bank organized pursuant to 12 U.S.C. 2001 through 2279aa-14 and hold the stock so purchased in an amount in excess of ten percent (10%) of the ~~sound~~ capital and surplus of such bank or trust company.

SECTION 5. IC 28-1-13-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.1. As used in this chapter, "capital and surplus" or "unimpaired capital and unimpaired surplus" ~~have has~~ the meaning set forth in ~~12 CFR 32.100~~ **12 CFR 3.100**.

SECTION 6. IC 28-5-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter and unless a different meaning appears from the context:

(a) The term "capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 3.100.

~~(a)~~ **(b)** The term "company" shall mean and include any corporation to which this chapter is applicable.

~~(b)~~ **(c)** The term "department" means the department of financial institutions of the state of Indiana.

~~(c)~~ The term "sound capital" means and includes the paid-in and unimpaired capital; the unimpaired surplus; and the unimpaired proceeds of the capital and investment notes and capital debentures of any company which have been issued under the authority and with the approval in writing of the department together with all accrued and

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unpaid interest on said capital and investment notes and capital debentures which by the terms thereof is payable:

- (i) at maturity;
- (ii) after a one year notice in writing given by the holder to the company, except that any such company may waive such notice whenever its reserve balance exceeds the amount provided in section 13 of this chapter; or
- (iii) at a fixed or determinable date or dates, which fixed or determinable date or dates are at intervals of not less than four (4) years.

(d) The department is hereby authorized to approve the issue of capital and investment notes and capital debentures by any company to create ~~sound~~ capital **and surplus**, but no such notes and debentures shall be authorized or approved by the department unless such notes and debentures shall, by their terms, provide that the debt, including all accrued and unpaid interest, evidenced thereby shall be subordinate, in order of priority on liquidation, to all of the obligations of the company to the holders of its installment and fully paid certificates of indebtedness or investment and creditors other than such creditors and holders who have expressly agreed otherwise and other than creditors who are such by reason of the ownership of such notes or debentures which the department is authorized to approve by this section.

SECTION 7. IC 28-5-1-6, AS AMENDED BY P.L.235-2005, SECTION 204, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Every company may exercise all the powers conferred upon domestic corporations by IC 23-1 but only to the extent that those powers may be necessary, convenient, or expedient to accomplish the purposes for which it is organized. Subject to the restrictions and limitations contained in this chapter, every company may exercise the following powers:

- (1) To issue, negotiate, and sell its secured or unsecured certificates of investment or indebtedness, subject to subdivision (17), upon terms and conditions, in any form, and payable at times that are not inconsistent with this chapter and, subject to subsection (c), bearing a rate of interest approved by the department.
- (2) To make, purchase, discount, or otherwise acquire extensions of credit under IC 24-4.5.
- (3) To lend money without security or upon the security of comakers, personal endorsement, or the mortgage of real or personal property or the mortgage or pledge of bailment leases or rentals due and to become due thereunder and other choses in

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1 action, and to contract for interest, discount, fees, charges, or
 2 other consideration fixed or permitted by any laws of Indiana
 3 concerning interest, discount, or usury.

4 (4) To discount, purchase, or otherwise acquire notes, bills of
 5 exchange, acceptances, bailment leases, and the property covered
 6 thereby or the rentals due or to become due thereunder or other
 7 choses in action and, subject to such restrictions the department
 8 imposes, to become owner or lessor of personal or real property
 9 acquired upon the request and for the use of a customer, and to
 10 incur additional obligations incident to becoming an owner or
 11 lessor of the property. The liability of a lessee under the lease
 12 does not constitute an obligation (as defined in section 8 of this
 13 chapter).

14 (5) To purchase or construct buildings and hold legal title to them,
 15 to be leased for public purposes to municipal corporations or
 16 other public authorities having resources sufficient to make
 17 payment of all rentals as they become due. Each lease agreement
 18 shall provide that upon expiration, the lessee shall become owner
 19 of the building.

20 (6) To invest in bonds, notes, or certificates which are:

21 (A) the direct or indirect obligations of the United States or of
 22 the state;

23 (B) obligations of mutual funds or financial institutions if the
 24 obligations represent a participation in a fund invested in, or
 25 are secured by, direct or indirect obligations of the United
 26 States owned by the mutual fund or financial institution;

27 (C) the direct obligations of a civil or school county, township,
 28 city, town, other taxing district, **or** municipality of Indiana;

29 (D) a special taxing district in Indiana;

30 (E) issued by or in the name of:

31 (i) the trustees of Indiana University;

32 (ii) the trustees of Purdue University;

33 (iii) the trustees of Ball State University;

34 (iv) the trustees of Indiana State University; or

35 (v) the Indiana health and educational facility finance
 36 authority under IC 20-12-63;

37 (F) issued by or in the name of any municipality of Indiana and
 38 payable from the revenues to be derived from the operation of
 39 facilities for the production or distribution of water, electricity,
 40 gas, or from the operation of sewage works; or

41 (G) the obligations of any Indiana toll road commission, public
 42 library, or schoolhouse holding corporation first mortgage

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1 bonds;
 2 which district, municipality, taxing unit, or corporation is not then
 3 in default in the payment of either principal or interest on any of
 4 its funded obligations and has not so defaulted for a period of
 5 more than six (6) months within the five (5) year period
 6 immediately preceding the purchase of the securities.
 7 (7) To invest in bonds, notes, or debentures rated in one (1) of the
 8 first four (4) classifications established by one (1) or more
 9 standard rating services specified by the department that satisfy
 10 requirements of marketability prescribed periodically by the
 11 department that are the obligations of a person, a firm, a limited
 12 liability company, a corporation, a state, a territory, an insular
 13 possession of the United States, or a county, township, town, city,
 14 taxing district, or municipality thereof which is not then in default
 15 in the payment of either principal or interest on any of its funded
 16 obligations and has not so defaulted within the five (5) year
 17 period immediately preceding the purchase of the securities and
 18 other investment securities prescribed by the department by rule.
 19 As used in this section, the term "investment securities" means
 20 marketable obligations evidencing indebtedness of a person, firm,
 21 limited liability company, or corporation in the form of bonds,
 22 notes, or debentures commonly known as "investment securities"
 23 and the definition of the term "investment securities" prescribed
 24 by the department by rule. Except as is otherwise provided in this
 25 chapter or otherwise permitted by law, nothing contained in this
 26 subdivision authorizes the purchase by an industrial loan and
 27 investment company of shares of stock or other securities, unless
 28 the purchase is necessary to prevent loss under a debt previously
 29 contracted in good faith and stocks or other securities so
 30 purchased or acquired shall, within six (6) months from the time
 31 of its purchase, be sold or disposed of at public or private sale,
 32 unless otherwise ordered by the department.
 33 (8) To invest in bonds or debentures issued under and by the
 34 authority of the Federal Home Loan Bank Act (12 U.S.C. 1421
 35 through 1429), or of the Home Owners' Loan Act (12 U.S.C. 1461
 36 through 1468), or obligations issued by or for farm credit banks,
 37 and banks for cooperatives under the Farm Credit Act of 1971 (12
 38 U.S.C. 2001 through 2279aa-14).
 39 (9) To invest in insured shares of an insured savings association
 40 organized under the laws of Indiana, and in insured shares of an
 41 insured federal savings association whose principal place of
 42 business is located in Indiana; and in certificates of indebtedness

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1 or investment of an industrial loan and investment company
 2 organized under the laws of Indiana. However, not more than
 3 twenty percent (20%) of the resources of the company may be
 4 invested in the insured shares of any such association nor more
 5 than ten percent (10%) of ~~sound the company's~~ capital and
 6 **surplus** in such certificates of industrial loan and investment
 7 companies.

8 (10) To make loans and advances of credit and purchases of
 9 obligations representing loans and advances of credit as are
 10 eligible for insurance by the federal housing administrator, and to
 11 obtain insurance from the administrator.

12 (11) To make loans secured by mortgage on real property or
 13 leasehold **if**:

14 **(A) the mortgage is** insured by the federal housing
 15 administrator; or

16 **(B) the company** makes a commitment to insure and to obtain
 17 insurance from the administrator, **if the mortgage is not**
 18 **insured by the federal housing administrator.**

19 (12) To purchase, invest in, and dispose of notes or bonds secured
 20 by mortgage or trust deed insured by the federal housing
 21 administrator or debentures issued by the federal housing
 22 administrator, or bonds or other securities insured by national
 23 mortgage associations.

24 (13) To discount, purchase, or otherwise acquire charge accounts,
 25 and drafts and bills of exchange evidencing charge accounts and
 26 to impose and collect monthly service charges and maintenance
 27 charges on charge accounts, drafts, or bills of exchange which are
 28 owned or acquired in amounts agreed upon between the company
 29 and the obligor, or obligors, on charge accounts, drafts, and bills
 30 of exchange.

31 (14) To purchase or otherwise acquire property, real or personal,
 32 tangible or intangible, in which the company has a security
 33 interest to secure a debt owing to the company contracted in good
 34 faith or the purchase or acquisition of which property is
 35 considered expedient to prevent loss from a debt owing to the
 36 company contracted in good faith, and for such purpose to engage
 37 in any lawful business considered necessary or expedient by the
 38 company to preserve, protect, or make saleable the property.
 39 Property thus purchased or acquired shall be sold and disposed of
 40 within two (2) years, or a longer period permitted by the
 41 department, after the purchase or acquisition.

42 (15) To act as trustee of a trust created in the United States and

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forming part of a stock bonus, pension, or profit sharing plan that is qualified for tax treatment under Section 401(d) of the Internal Revenue Code, and to act as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, if the funds of that trust or account are only invested in certificates of investment or indebtedness of the company or in obligations or securities issued by that company. All funds held under this subdivision in a fiduciary capacity may be commingled by the company for appropriate investment purposes. However, individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subdivision.

(16) To do anything necessary and appropriate to obtain or maintain federal deposit insurance under the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811 through 1833e) or insurance under any other federal or Indiana law providing insurance for certificates of investment or indebtedness issued by a company. A company that obtains and maintains federal deposit insurance is not required to obtain approval from the department concerning the rate of interest payable on, or the form, the terms, or the conditions of the certificates of investment or indebtedness, and the company may exercise all of the powers that are conferred upon institutions maintaining federal deposit insurance that are not in conflict with Indiana law.

(17) To become a member of a federal home loan bank and acquire, own, pledge, sell, assign, or otherwise dispose of shares of the capital stock of a federal home loan bank.

(18) To borrow money and procure advances from a federal home loan bank and to transfer, assign to, and pledge with the federal home loan bank any of the bonds, notes, contracts, mortgages, securities, or other property of the company held or acquired as security for the payment of the loans and advances.

(19) To possess and exercise all rights, powers, and privileges conferred upon and do and perform all acts and things required of members or shareholders of a federal home loan bank, or by the provisions of 12 U.S.C. 1421 through 1449.

(20) Subject to section 6.3 of this chapter, to exercise the rights and privileges (as defined in section 6.3(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(b) No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or

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advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, applies to loans, advances of credit, or purchases made pursuant to subsection (a)(10), (a)(11), or (a)(12).

(c) If any national or state chartered bank or savings association is not limited by law with regard to the rate of interest payable on any type or category of checking account, savings account, or deposit, certificate of deposit, membership share, or other account, then industrial loan and investment companies are similarly not limited with regard to the interest payable on certificates of investment or indebtedness.

SECTION 8. IC 28-5-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Except as otherwise provided in ~~subsection~~ **subsections (c), (d), and (e) of this section**, the total obligation of any person, firm, limited liability company, or corporation to any ~~such industrial loan and investment~~ company shall at no time exceed fifteen percent (15%) of the amount of the ~~sound~~ capital **and surplus** of ~~such the~~ company.

(b) The term "obligations" as used in this section means the direct liability of the maker or acceptor of paper discounted with or sold to any such company, and the liability of the indorser, drawer or guarantor who obtains a loan from, or discounts paper with or sells paper under ~~his the person's~~ guaranty to any such company, and, in the case of obligations of a copartnership or association, includes only those obligations of the several members thereof directly related to the copartnership or association, and, in the case of obligations of a corporation, includes all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest.

(c) Subsection (a) ~~of this section~~ does not apply to the following:

(1) Obligations arising out of the discount of commercial or business paper actually owned by the person, firm, limited liability company, or corporation negotiating such paper.

(2) Obligations of the United States or any instrumentality thereof or of this state, or of any municipal corporation or taxing district thereof, or obligations fully insured by the federal housing administrator as to principal; however, the department may, under such rules and regulations as it may prescribe, limit the total amount that may be invested by any ~~such companies~~ **industrial loan and investment company** in any one obligation ~~and or~~ in any class of obligations described in ~~clauses subdivision (1) and this subdivision. (2) of this subsection.~~

(3) Obligations arising out of the agreement to repurchase, ~~or the~~ guaranty or endorsement of, retail installment sales contracts by

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1 a retail seller or subsequent assignee; however, this ~~clause~~
 2 **subdivision** does not apply in any case where such company
 3 purchasing such paper does not become the absolute owner, or in
 4 any case where installment payments are collected by a prior
 5 owner of the paper, or by a retail seller of the goods represented
 6 thereby.

7 (4) Obligations arising out of the agreement to repurchase, ~~or~~ the
 8 guaranty or indorsement of, title-retaining real estate installment
 9 sales contracts by a seller, or subsequent assignees; however, this
 10 ~~clause~~ **subdivision** does not apply in any case where such
 11 company purchasing such contracts does not become the absolute
 12 owner, or in any case where installment payments are collected by
 13 a prior owner of the contracts or by a seller of such contracts.

14 (5) Obligations of the borrower arising out of loans in which the
 15 borrower has no personal liability but which are secured by
 16 bailment leases or the rentals due and to become due thereunder;
 17 and the rights of the lessor in said leases and the property being
 18 leased thereunder, and which loans are to be repaid out of said
 19 rentals due and to become due under said leases; or obligations
 20 arising out of the guaranty, endorsement, or assignment of
 21 bailment leases or the rentals due and to become due thereunder
 22 by the lessor; however, this ~~clause~~ **subdivision** does not apply in
 23 any such case where such company does not have the right or
 24 does not actually collect the rentals due or to become due
 25 thereunder.

26 ~~(6)~~ (d) Obligations to ~~the~~ **an industrial loan and development**
 27 company of any subsidiary or subsidiaries of the company engaged in
 28 business for the purpose provided in section 6(a)(15) of this chapter
 29 shall at no time exceed in the case of one (1) subsidiary ten percent
 30 (10%) of the ~~sound~~ capital **and surplus** of the company or, in the case
 31 of more than one (1) subsidiary, in the aggregate twenty percent (20%)
 32 of the ~~sound~~ capital **and surplus** of the company unless in either case
 33 the department shall approve a larger percentage.

34 ~~(7)~~ (e) Obligations to ~~the~~ **an industrial loan and development**
 35 company of any subsidiary or subsidiaries of the company engaged in
 36 business for the purpose provided in section 6(a)(14) of this chapter
 37 shall at no time exceed in the aggregate thirty percent (30%) of the
 38 amount of the ~~sound~~ capital **and surplus** of the company or such larger
 39 sum as the department may approve.

40 ~~(d)~~ (f) Except as otherwise provided in this subsection and in
 41 section 9 of this chapter, no loan shall be made, directly or indirectly,
 42 by any industrial loan and investment company, to any active executive

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officer, agent, or employee thereof. The board of directors or executive committee of any industrial loan and investment company may, by resolution, duly entered in the records of the proceedings of the board or committee, authorize loans to or extend lines of credit to:

(1) any active executive officer, agent, or employee of such industrial loan and investment company in any amount not exceeding, at any one time outstanding:

(i) (A) ten thousand dollars (\$10,000); plus

(ii) (B) ten thousand dollars ~~(\$10,000.00)~~ **(\$10,000)** which ~~shall~~ **may** be used for the sole purpose of educating the children of such active executive officer, agent, or employee as hereinafter provided; or

(2) directors not holding any office in such industrial loan and investment company, and not ~~being~~ **acting as** an agent or employee thereof.

The board or committee may likewise authorize loans to or extend lines of credit to firms, limited liability companies, or corporations in which active executive officers, agents, ~~or~~ employees, or directors may be partners, members, or stockholders, but the total amount of the obligations of all such active executive officers, agents, or employees, and directors, or other firms, limited liability companies, or corporations in which such active executive officers, agents, employees, and directors are partners, members, or stockholders, shall not at any time exceed fifteen percent (15%) of the total resources of the industrial loan and investment company at the time any such loan or extension of credit is made. Loans and lines of credit permitted by this subsection shall be made only on authorization by a majority of all of the directors or members of the executive committee of such industrial loan and investment company, and by the affirmative vote of all directors or members of the executive committee present at the meeting, and such authorization may be general and need not be given for each loan or line of credit extended; however, such general authorization shall be voted upon at least annually. When a line of credit has been extended pursuant to this subsection to any such active executive officer, agent, or employee or to any such director, or to any firm, corporation, limited liability company, or partnership in which an active executive officer, agent, employee, or director may be a partner, member, or stockholder, any notes or other instruments evidencing an indebtedness to the industrial loan and investment company, and any renewals or extensions thereof, need not be authorized as otherwise required by this subsection if such loan, or any renewal or any extension thereof, is within the terms of the authorization of the line of

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1 credit theretofore extended by the directors or executive committee to
 2 such active executive officer, agent, or employee, or to such director,
 3 or to any firm, corporation, limited liability company, or partnership in
 4 which any active executive officer, agent, employee, or director may be
 5 a partner, member or stockholder. The department, under such general
 6 rules and regulations as it may prescribe, which shall apply to all
 7 industrial loan and investment companies alike, may require full
 8 collateral security for all loans of the types permitted by this subsection
 9 and, for the purpose of providing that such security may be adequate,
 10 may specify the types thereof that may be pledged. Subject to section
 11 9 of this chapter, the limitations of this subsection shall not apply to a
 12 loan by an industrial loan and investment company to an active
 13 executive officer, agent, or employee thereof made upon the security
 14 of real estate whereupon such active executive officer, agent, or
 15 employee maintains his actual residence. The term "actual residence"
 16 includes a two-family dwelling unit if one of such units is occupied by
 17 the active executive officer, agent, or employee of the industrial loan
 18 and investment company.

19 ~~(e)~~ **(g)** An officer or director of any industrial loan and investment
 20 company who knowingly violates subsection ~~(d)~~ of this section **(f)**
 21 commits a Class B felony.

22 SECTION 9. IC 28-5-1-11 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) Any such
 24 company shall have the power to purchase, hold, and convey real estate
 25 for the following purposes and for no others:

26 (1) Such as shall be necessary for the convenient transaction of its
 27 business, but the cost or value of such real estate as carried on its
 28 books shall not exceed fifty percent (50%) of the amount of its
 29 ~~soumd~~ capital **and surplus** without the written consent of the
 30 department.

31 (2) Such as shall be conveyed to it in satisfaction of debts or
 32 obligations previously contracted in the course of its dealings, or
 33 in exchange for real estate so conveyed to it.

34 (3) Such as it shall purchase at sales under judgments or decrees
 35 of foreclosure on mortgages held by such company or shall
 36 acquire as additional security for obligations due such company.

37 (4) Such as shall have been sold under a title-retaining,
 38 installment, real estate sales contract, the term of which does not
 39 exceed twelve (12) years, where such contract is either purchased
 40 by it or taken as collateral security for a loan. However, the total
 41 cost of all real estate sold on title-retaining installment sales
 42 contracts as carried on the books of the company shall not at any

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one (1) time exceed five percent (5%) of the total resources of the company when such real estate title-retaining installment sales contracts were acquired without the written approval of the department.

(b) No such company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts or obligations due to it, for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired without the consent in writing of the department. However, any such company may sell any real estate so purchased or otherwise acquired by it under a title-retaining installment real estate sales contract, the term of which shall not exceed twelve (12) years, and hold title or possession thereof until the same is conveyed to the purchaser thereof under the terms and provisions of any such contract.

(c) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a company includes the following:

(1) Real estate on which the principal office or a branch office of the company is located.

(2) Real estate that is the location of facilities supporting the operations of the company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the company expects, in good faith, to use as a company office or facility in the future.

(d) If real estate referred to in subsection (c)(3) is held by a company for one (1) year without being used as a company office or facility, the board of directors of the company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(e) Real estate referred to in subsection (c)(3) may not be held by a company for more than three (3) years without being used as a company office or facility unless:

(1) the board of directors of the company, by resolution:

(A) reaffirms annually that the company expects to use the real estate as a company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a company office or facility; and

(2) the director determines that:

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(A) the continued holding of the real estate by the company does not endanger the safety and soundness of the company; and

(B) the company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (c)(1) and (c)(2).

(f) Real estate referred to in subsection (c)(3) may not be held by a company for more than ten (10) years without being used as a company office or facility unless the department consents in writing to the continued holding of the real estate by the company.

SECTION 10. IC 28-6.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, "capital and surplus" and "unimpaired capital and surplus" ~~have has~~ the meaning set forth in ~~12 CFR 32.12~~ **12 CFR 3.100**.

SECTION 11. IC 28-8-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. Any two (2) or more banks or trust companies may invest in a bank service corporation an amount not to exceed ten percent (10%) of the ~~sound~~ capital **and surplus** of each of them as defined in IC 28-1-1.

SECTION 12. IC 28-13-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust company, savings bank, or savings association to increase the ~~sound~~ capital **and surplus** or to reduce the amount of the deposits of the bank or trust company, savings bank, or savings association. The department shall, in arriving at a decision whether to order a bank or trust company, savings bank, or savings association to increase the ~~sound~~ capital **and surplus** or reduce the amount of the deposits for the protection of the depositors of the bank or trust company, savings bank, or savings association, take into consideration the following:

- (1) Quality of management.
- (2) Liquidity of assets.
- (3) History of earnings and the retention of earnings.
- (4) Quality and character of ownership.
- (5) Burden of occupancy expenses.
- (6) Potential volatility of deposit structure.
- (7) Quality of operating procedures.
- (8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the ~~sound~~ capital **and surplus** or decrease in the deposits is necessary, the

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1 department shall enter an order fixing the amount of the increase or
2 decrease. The order shall be complied with within the time period fixed
3 by the order.

4 (c) The department may require a corporate fiduciary to increase its
5 capital. In deciding whether to order a corporate fiduciary to increase
6 its capital, the department shall take into consideration the following:

- 7 (1) Quality of management.
- 8 (2) Liquidity of assets.
- 9 (3) History of earnings and the retention of earnings.
- 10 (4) Quality and character of ownership.
- 11 (5) Burden of occupancy expenses.
- 12 (6) Quality of operating procedures.
- 13 (7) Ability to administer fiduciary accounts in a prudent manner
14 consistent with applicable laws or regulations.

15 (d) If the department determines that an increase in capital **under**
16 **subsection (c)** is necessary, the department shall enter an order fixing
17 the amount of the increase. The order must be complied with within the
18 period fixed by the order.

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